PATENT APPLICATION
Client Seq. No. 3069
Do. No. 2705-130

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Mehryar K. Garakani, et al.		
Confirmation No.:	6082		
Serial No.:	09/728,430	Examiner:	Saba Tsegaye
Filed:	November 30, 2000	Group Art Unit:	2616
For:	TWO-PASS METHOD AND APPARATUS FOR ACHIEVING MAXIMAL DATA COMPRESSION FOR A MODEM RELAY MODE OF OPERATION IN A VOICE FRAME NETWORK		
Date:	November 19, 2007		

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection dated September 13, 2007, in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

This review is requested for the reason(s) stated on the attached sheet(s). Note: no more than five (5) pages may be provided.

I am the:
- ☐ applicant/inventor
- ☐ assignee of record of the entire interest
  See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed)
- ☒ attorney or agent of record
- ☐ attorney or agent acting under 37 CFR 1.34

Total of 2 forms are submitted.

Customer No. 20575

Respectfully submitted,

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ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

The Fayad reference does not teach the invention as claimed.

Fayad teaches two different, mutually exclusive processes to establish a connection between the modems 302 and 304. In a first process, disclosed at col. 6, line 52 through col. 7, line 19, *a reliable protocol* is used between the gateways and between each gateway and its respective modem. Each segment in this process is negotiated independently and then used in operation.

In contrast, the claims require that the process negotiate the two data compressions independently and then coordinate them to select one between the two different data compressions. See claims 21, 28, 30, and 33.

In a second process, *an unreliable data protocol* is used between the various segments, giving rise to a requirement that the parameters, *by definition something within a protocol* not *a protocol itself*, need to be harmonized between the segments, col. 8, line 11 through col. 12, line 29. The office action refers to harmonization of protocols, but Fayad actually teaches harmonization between parameters within one protocol. The working parameters are defined at col. 8, lines 20-22 as to what is included in the parameters, and the specifics of each parameter are defined at col. 8, lines 23-39. The data compression used is not one of the parameters that are harmonized by exchange of XID frames.

Therefore, neither embodiment of Fayad teaches all of the elements of the claimed invention. Mahler is merely relied upon to teach storing of negotiated profiles and compression options. Mahler does not address, nor is it directed to, any of the subject matter for which Fayad is deficient.

The two embodiments in Fayad teach away from each other and cannot be relied upon to render the claimed invention obvious.

As one of these processes uses a reliable protocol and the other uses an unreliable protocol, these proeesses are *mutually exclusive*. Yet, in the office action, the discussions of the two processes are treated as if they are the same process. In order to more clearly demonstrate the issue with mixing the two separate processes in Fayad, Applicant has quoted portions of the relevant language from the office action, pages 2-3, below, with a parenthetical annotation as to which embodiment the referenced text applies.

The office action states, "determining a first maximal compression..." and relies upon Fayad, col. 6, lines 65 through col. 7, line 3. This is directed to the *first process* using a reliable protocol;

"determining second maximal data compression on a second leg..." relying upon the same text above, apparently, again directed to the *first process*;

"comparing the first maximal data compression..." relying upon col. 11, lines 48-49, directed to the second, unreliable protocol embodiment, *the second process*;

"selecting end-to-end maximal data compression..." relying upon col. 11, lines 48-51, directed to the second, unreliable protocol embodiment, *the second process*;

"renegotiating only an unselected..." relying upon col. 8, line 54 though col. 9, line 2, directed to the *second, unreliable protocol embodiment*; and finally,

"transmitting data..." relying upon col. 6, line 52 through col. 7, line 20, directed to the *first, reliable protocol embodiment.*

As Fayad does not teach all of the above elements in one of the two mutually exclusive situations disclosed therein, Fayad cannot render obvious the elements of one claim that performs both segment by segment negotiation and then harmonization. The embodiment of Fayad that performs modem renegotiation and selection of an end-to-end compression does not teach selection of independent first and second maximal compression as required by the first claim. The embodiment of Fayad that performs the selection of first and second maximal compression does not teach selection and renegotiation, as that embodiment does not require it.

Even if the embodiments were permissibly used together, Fayad still does not render obvious the invention as claimed.

In the second embodiment, using the unreliable protocol, in which a virtual connection is established modem to modem (see col. 7, line 21 through col. 10, line 32), the text referenced to show harmonization does not show harmonization of data compression rates. The text referenced in the office action is col. 8, lines 58-63. As discussed above, the working

parameters, or parameters, that are harmonized by XID frames is set out in text above that reference at col. 8, lines 20-39. The parameters include K parameters, N401 and HDLC optional functions. There is no mention or suggestion that the data compression is harmonized by exchange of XID frames.

The Applicant also asserts all arguments made previously, whether or not explicitly discussed herein, to preserve the right to assert these arguments in the Appeal Brief.

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